IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

O.P.No.26574 of 2002(L)

PETITIONERS:-

1. SABU K.ABRAHAM,
   HEADMASTER,
   M.T.SEMINARI L.P.SCHOOL,
   KOTTAYAM.

2. SAJI K.KURIAN,
   HEADMASTER,
   M.T.L.P.SCHOOL, THOTTACKADU,
   KOTTAYAM.

3. ANTONY P.J.,
   HEADMASTER,
   ST.SEBASTIAN'S U.P.SCHOOL,
   MAMOOD,
   CHANGANASSERY-VIA,
   KOTTAYAM.

4. SABU SEBASTIAN,
   HEADMASTER,
   ST.JOSEPH'S U.P.SCHOOL,
   CHAMBAKARA,
   KARUKACHAL-VIA
   KOTTAYAM DISTRICT.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

RESPONDENTS:-

1. STATE OF KERALA ,
   REP.BY ITS SECRETARY TO GOVRNMENT,
   DEPARTMENT OF EDUCATION,
   GOVT. SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
   THIRUVANANTHAPURAM.

3. THE ASSISTANT EDUCATIONAL OFFICER,
   KOTTAYAM EAST.

4. THE ASSISTANT EDUCATIONAL OFFICER,
   CHANGANASSERY.

5. THE ASSISTANT EDUCATIONAL OFFICER,
   KARUKACHAL.

BY GOVERNMENT PLEADER SRI.BENNY GERVASIS.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF CERTIFICATE NO.3820/92 DATED 21.4.92 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 1ST PETITIONER.

EXT.P2 - TRUE COPY OF CERTIFICATE NO.1995/98 DATED 22.01.98 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 2ND PETITIONER.

EXT.P3 - TRUE COPY OF APPOINTMENT ORDER DATED 15.09.98 ISSUED BY THE MANAGER OF THE SCHOOL TO THE 2ND PETITIONER.

EXT.P4 - TRUE COPY OF APPOINTMENT ORDER DATED 1.6.1989 ISSUED BY THE MANAGER OF THE SCHOOL TO THE 3RD PETITIONER.

EXT.P5 - TRUE COPY OF THE CERTIFICATE NO.1491/2001 DATED 19.1.2001 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 3RD PETITIONER.

EXT.P6 - TRUE COPY OF THE APPOINTMENT ORDER DTD.31.3.2001 ISSUED BY THE MANAGER OF THE SCHOOL TO THE 3RD PETITIONER.

EXT.P7 - TRUE COPY OF THE CERTIFICATE NO.7030/2001 DATED 7.6.2001 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 4TH PETITIONER.

EXT.P8 - TRUE COPY OF THE APPOINTMENT ORDER DATED 1.6.2001 ISSUED BY THE MANAGER OF THE SCHOOL TO THE 4TH PETITIONER.

EXT.P9 - TRUE COPY OF THE REPRESENTATION DATED 8.10.2001 SUBMITTED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT.

EXT.P10 - TRUE COPY OF ORDER NO.G.O.(P).127/99/G.EDN. DATED 4.6.99 ISSUED BY THE 1ST RESPONDENT.

EXT.P11 - TRUE COPY OF THE ORDER NO.G.O.(P) NO.136/88/G.EDN. DATED 8.9.1988.

EXT.P12 - TRUE COPY OF THE ORDER IN C.M.P.NO.34397/99 IN O.P. NO.20891/99 OF THIS COURT DATED 13.8.99.

EXT.P13 - TRUE COPY OF ORDER NO.A-4597/99 DATED 19.3.2001 PASSED BY THE ASST.EDL. OFFICER, PAYYANNUR.

EXT.P14 - TRUE COPY OF THE ORDER NO.D/1498/2001 DATED 12.6.2001 PASSED BY THE ASST. EDL. OFFICER, MANNARKKAD.

EXT.P15 - TRUE COPY OF THE REPRESENTATION DATED 17.12.2001 SUBMITTED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:
---------- NIL.

- TRUE COPY -

H.L.Dattu,C.J. & K.T.Sankaran,J.

O.P.No.26574 of 2002-L

Dated, this the 5th day of October, 2007

JUDGMENT

H.L.Dattu,C.J.

The reliefs sought for in this Original Petition are as under:

> "(i) Issue a writ of certiorari or any other appropriate writ, order or direction quashing Ext.P11 Order;
>
> (ii) issue a writ of mandamus or any other appropriate writ order or direction commanding the respondents to disburse the scale of pay of Headmasters due to the petitioners with effect from 06.06.94, 15.09.98, 30.03.2001 and 01.06.2001 respectively;
>
> (iii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the first respondent to consider and dispose of Ext.P15 representation forthwith;
>
> (iv) issue any appropriate writ, order or direction declaring that Rule 1(1) of Chapter XXVI of K.E.R. to the extent it imposes 15 years of continuous service for drawing the scale of pay of Headmasters is unconstitutional and violative of Article 14, 16 and 39(d) of the Constitution of India".

(2) The legal issues raised in this Original Petition are identical with the issues raised and considered by this Court in the case of *Annet D' Cunha* v. *State of Kerala* [2004 (1) KLT 161]. In the said decision, the Court has held as under:

> "7. In view of the above discussion, we hold that:
>
> (i) The provisions in R.1 of Chap.XXVI of K.E.R. as amended by G.O.(P) No.136/88/G.Edn. Dated 8th September, 1988 is valid. It is not discriminatory or unconstitutional.
>
> (ii) The Judgment in O.P.No.27056 of 2001 is not correctly decided.

(iii) R.1 of Chap.XXVI of K.E.R. is not applicable retrospectively and those Headmasters who were appointed prior to 18th September, 1988 are entitled to the scale of pay of Headmasters even if they are not having 15 years service as held by the Full Bench in *Indira's case* (Supra) [ILR 1988 (2) Kerala 771 (FB)].

(iv) Headmasters in private Aided Schools and Government Schools are entitled to parity in pay and allowances as held by the Full Bench following the observations of the Apex Court in State of H.P. v. H.P. State Recognised and Aided Schools Managing Committees and others [(1995) 4 SCC 507].

Government will be free to adjust the excess salary given on the basis of interim orders of this Court to the Headmasters who were promoted after 8th September, 1988 from their future salary in easy instalments".

(3) In view of the law declared by this Court in the aforesaid decision, the issues raised herein are no more debatable. Respectfully following the observations made in the aforesaid decision, this Original Petition is disposed of in the same terms and conditions and the orders and directions issued in that case.

C.M.P.No.45074 of 2002 is dismissed.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-